

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X (ECF)
BODO PARADY, as Special Administrator of the Estate 07 CIV 3640 (JCF)
of SABINA PARADI and BODO PARADY and MARY
MOORE, individually,

Magistrate Judge Francis
-all purposes-

Plaintiffs,

**AFFIRMATION IN OPPOSITION
TO MOTION TO BAR
TESTIMONY OF PLAINTIFFS'
ECONOMIC EXPERT,
STAN V. SMITH, PhD.**

MICHAEL R. PHILLIPS,
Defendant,

-----X
MICHAEL V. KAPLEN, an attorney, being duly admitted to practice law
before the Courts of New York and the Federal District Court for the Southern
District of New York, affirms the following to be true under the penalties of
perjury.

1) I am a member of the law firm of DE CARO & KAPLEN, LLP, attorneys for
plaintiffs in the within action. I submit this affirmation and accompanying exhibits
in support of plaintiffs' opposition to defendant's motion to bar the report and
testimony of plaintiffs' economic expert, STAN V. SMITH, PhD. (hereinafter
"SMITH").

2) Initially, this Court should note that DR. SMITH has submitted two
separate economic reports in this case. One based upon the assumption that
the New York law of damages would apply to the pain and suffering, loss of
enjoyment of life and wrongful death of plaintiff's decedent (exhibit "A") and one
based upon the assumption that the New Jersey law of damages would apply to
these same elements of damages. (exhibit "B").

A review of the exhibit annexed to defendant's motion reveals that Defense counsel has only attacked DR. SMITH'S New Jersey report incorrectly arguing that it applied to New York law. Assuming the mistake of defense counsel, plaintiff's opposition will address both the admissibility of the testimony and conclusion of DR. SMITH under both the laws of New York and New Jersey.

3) Plaintiffs' expert DR. SMITH, is well qualified to offer opinions and conclusions concerning the economic damages sustained by plaintiffs'. DR. SMITH hold a PhD in Economics from the University of Chicago and a Masters Degree in Economics from the University of Chicago, has been an active member and officer in professional societies, has published extensively and has also taught in his area of expertise. His curriculum vitae is annexed as exhibit "C". The defense has not taken issue with DR. SMITH'S credentials.

4) DR SMITH was retained in this matter to calculate losses sustained as a result of the injuries and death of SABINA PARADI. These losses are: (1) the loss of wages and employee benefits; (2) the loss of replacement household/family services, including (a) the loss of the advice, counsel, guidance, instruction and training services sustained by Ms. Paradi's surviving family and (b) the loss of accompaniment services sustained by Ms. PARADI'S surviving family and (3) the loss of the value of life, also known as the loss of the enjoyment of life.

5) Defendant has offered no expert to challenge either the methodology or opinions of DR. SMITH and the statements of defense counsel should be disregarded as having no support or basis.

6) Further, defendant has never sought the deposition of DR. SMITH and simply draws impermissible assumptions concerning the scope and substance of his testimony. Defense counsel's suppositions concerning DR. SMITH'S testimony simply are not supported by the record and should be ignored by this Court.

7) DR. SMITH has written extensively regarding the economic theory of hedonic damages. His text, Economic/Hedonic Damages: A Practice Book for Plaintiff and Defense Attorneys is utilized in Colleges throughout the country. Annexed as exhibit "D" are letters from multiple college professors indicating their use of DR. SMITH'S text as part of their curriculum.

8) In both of DR. SMITH'S reports, his methodology and the basis for his opinions are extensively set forth. In addition to setting forth his conclusions, DR. SMITH has set forth the source of his data, his assumptions, learned treatises which support his analysis and the manner in which he has arrived at his opinions. Significantly, defendant has not offered any challenges in admissible form to any of these matters except an impermissible and unsupported attack by defense counsel which should be ignored by this Court.

9) DR. SMITH has authored many articles on his theories and methodology. Many of these articles have been accepted by peer reviewed economic journals. A representative sampling of some of these articles in peer reviewed journals concerning DR. SMITH'S methodology are annexed as exhibit "E".

10) DR. SMITH'S testimony is relevant to the issues to be determined in this matter. It is based upon sufficient facts and data; is the product of reliable

principles and methods; and DR. SMITH has applied the principles and methods of economists in his field to the facts of this case.

WHEREFORE, based upon the exhibits submitted and the accompanying memorandum of law in opposition to defendant's motion, the defendant's motion to bar the testimony and reports of DR. STAN SMITH, PhD. be denied in all respects.

Dated: Pleasantville, New York
August 14, 2008

DE CARO & KAPLEN, LLP

By: S/ *Michael V. Kaplen*

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